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No. 650

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

THE STATE OF OKLAHOMA EX REL COMMISSIONERS OF THE LAND OFFICE OF SAID STATE,
Petitioner,

VERSUS

MAGNOLIA PETROLEUM COMPANY,
a corporation,
Respondent.

REPLY BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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April, 1955.

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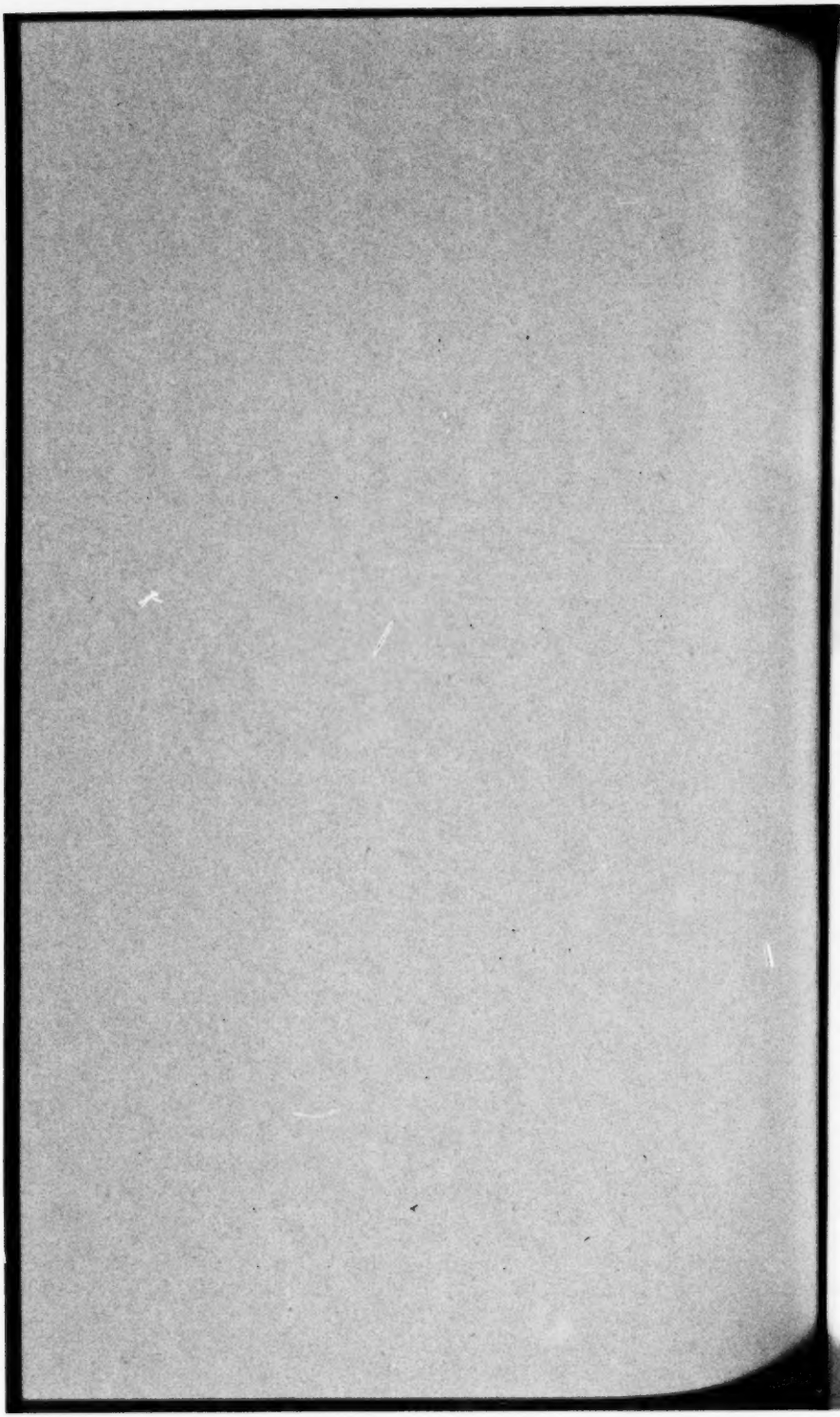

INDEX

PAGE

I. The Court of Appeals has decided local questions in a way not in conflict with applicable state law ... 1

II. Lack of a substantial question of general public concern ... 6

Conclusion ... 7

CITATIONS

CASES:

Berryman v. Producers Corp. of Nevada, 206 Okla. 24, 240 P.2d 1111, 1112 ... 2, 3, 4, 7

Dale v. Deal, 159 Okla. 111, 14 P.2d 263 ... 5, 6

First National Bank of Butler v. Welch, 119 Okla. 270, 250 P.2d 100, 102 ... 2, 3, 7

Godfrit v. Judd (Colo.), 182 P.2d 907 ... 5

Hunt v. State, 110 Tex. 204, 217 S.W. 1034 ... 5

Jewell Ridge Coal Corp. v. Local No. 6167, U.M.W., 325 U.S. 161, 65 Sup. Ct. 1063, 89 L. Ed. 1534, rehearing denied, 325 U.S. 897, 65 Sup. Ct. 1550, 89 L. Ed. 2007 ... 7-8

Johnson v. Farmer's Union Co-op. Royalty Co., 205 Okla. 578, 238 P.2d 831 ... 2, 3, 4, 7

Miller v. Frampton, 100 Okla. 115, 227 Pac. 890 ... 6

Okanogan Power & Irrigation Co. v. Quackenbush, 107 Wash. 651, 182 Pac. 618 ... 5

State v. Red River Lumber Co., 109 Minn. 185, 123 N.W. 412, 413 ... 2

Stevens v. Patten, 174 Okla. 582, 50 P.2d 1106, 1110 2

INDEX CONTINUED

PAGE

STATUTES:

64 Okla. Stats., Sec. 191 ..... 3-4, 7

Session Laws of Oklahoma, 1923-24, Ch. 57, Secs. 1-2 5

TEXTBOOKS AND MISCELLANEOUS:

Constitution of Oklahoma, Art. II, Sec. 7 6

Constitution of United States, Fourteenth Amendment 6

Vol. 1, Merrill on Notice, Sec. 560, p. 589 5

Vol. 36, Words and Phrases, p. 559 5

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I.

THE COURT OF APPEALS HAS DECIDED LOCAL QUESTIONS IN A WAY NOT IN CONFLICT WITH APPLICABLE STATE LAW.

The petitioner, State of Oklahoma *ex rel* Commissioners of the Land Office of said State, requests the granting of a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered on August 30, 1954. Their petition for rehearing, together with that of The Carter Oil Company, was denied on February 11, 1955. The Land Commissioners of Oklahoma urge certiorari and review on the ground that the

Court of Appeals decided the question of mineral ownership in conflict with state law. The majority and concurring opinions of the court below, printed at pages vii-xxi in Appendix A to the petition for certiorari and brief filed herein, clearly set forth the applicable Oklahoma statutes and decisions relied upon for entering judgment in favor of respondent, Magnolia Petroleum Company.

Prior to the time respondent purchased mineral rights in the controverted lands from holders of certificates of purchase contracts with the State of Oklahoma, the Land Commissioners of said State had, pursuant to statutory authority, sold and conveyed said lands and vested equitable title thereto in favor of the certificate holders, who had full right to the possession, use, and enjoyment of the lands, and the State retained bare legal title only to secure the unpaid balance of the purchase price. *Stevens* v. *Patten*, 174 Okla. 582, 50 P.2d 1106, 1110, and cases there cited; *Johnson* v. *Farmer's Union Co-op. Royalty Co.*, 205 Okla. 578, 238 P.2d 831; *Berryman* v. *Producers Corp. of Nevada*, 206 Okla. 24, 240 P.2d 1111, 1112; *First National Bank of Butler* v. *Welch*, 119 Okla. 270, 250 P.2d 100, 102; *State* v. *Red River Lumber Co.*, 109 Minn. 185, 123 N.W. 412, 413.

Long prior to cancellation of their respective certificates, the equitable title owners, Tooley and Ebenkamp, sold and conveyed the mineral rights in question to respondent. Petitioner concedes that Tooley and Ebenkamp had such an interest in the land that they could sell undivided mineral interests to third persons. In fact, the Oklahoma Supreme Court has expressly held that certificate holders have the right to convey mineral rights

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in the land covered by a certificate of purchase. *First National Bank of Butler* v. *Welch, supra; Johnson* v. *Farmer's Union Co-op. Royalty Co., supra; Berryman* v. *Producers Corp. of Nevada, supra.*

Even though the respondent's mineral deeds, prior to cancellation of the certificates, were duly and regularly filed of record, both in the county wherein the land is situated and in the Office of the Land Commissioners of Oklahoma, the petitioner has contended herein that there is no evidence that it had approved or recognized the conveyances. In this respect, it is urged that an administrative practice of long standing had rendered such approval necessary in order to bind the State of Oklahoma. As a basis for the administrative interpretation, the petitioner relies upon 64 Okla. Stats., Sec. 191, which provides as follows:

> "Any purchaser of lands under the provisions of this act shall have the right to transfer or assign all his rights, title and interest in and to such lands, and such assignment shall be in form and executed and acknowledged as required under the laws governing conveyances; provided, before delivery of patent, such assignment, to be valid, shall be duly recorded in a proper book, kept for that purpose by the Commissioners of the Land Office; and provided, further, that where the purchaser of such lands has a husband or wife, such husband or wife shall join in the assignment of any such contract. Upon the sale and transfer of the interest of a holder of a certificate of purchase in and to the land covered thereby, if the same is approved by the Commissioners of the Land Office, and upon the payment of any principal or interest due to date of transfer, and the surrendering of the certificate of purchase transferred, the Commissioners of the

> Land Office shall issue and deliver to the transferee a new certificate of purchase upon the execution by the transferee of a new certificate of purchase note for the deferred payments, and the note, executed by the holder of the certificate of purchase transferred, shall be canceled and surrendered to him. R.L. 1910, Sec. 7156; Laws 1910-11, ch. 44, p. 87, Sec. 1; Laws 1915, ch. 210, Sec. 8."

The Court of Appeals correctly held, consistent with applicable Oklahoma decisions, that an approval by the Commissioners under such statute is necessary only when there is a release of the original certificate note, cancellation of the original certificate, the execution of a new certificate note by the assignee and the issuance of a new certificate of purchase to the assignee. As noted in the majority opinion in the Court of Appeals, the interpretation placed upon this statute by decisions of the Supreme Court of Oklahoma renders the administrative interpretation untenable. *Berryman* v. *Producer's Corp., supra,* and *Johnson* v. *Farmer's Union Co-op. Royalty Co., supra,* leave no doubt that the statute is applicable only to a conveyance by a certificate holder of "all his right, title and interest in the land, which is equivalent to an assignment of the certificate of purchase", *Berryman* v. *Producer's Corp., supra,* at page 113, and that the statute is inapplicable to a conveyance of less than all of his right, title and interest in the land, whether or not approved by the Land Commissioners. While the petitioner was not a party in the *Berryman* or *Johnson* cases, the unqualified interpretation and plain meaning of this statute by the Oklahoma

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Supreme Court can leave no doubt that the rule of those cases has equal application to the Commissioners.

The proceedings whereby the Land Commissioners cancelled the certificates of purchase of Tooley and Ebenkamp were quasi-judicial in character and required notice under Chapter 57, Session Laws of Oklahoma, 1923-24, Sections 1 and 2, applicable at the time of cancellation. Failure to have given notice to the certificate holders would, of course, have rendered the proceedings a nullity. *Dale* v. *Deal*, 159 Okla. 111, 14 P.2d 263. Section 2 of the 1923-24 Session Laws of Oklahoma, above noted, further requires that notice of cancellation be given to the "record owner, lien holder of record and the party or parties in possession." By the same token that a party in possession or a lien-holder might not necessarily be a certificate holder or owner referred to in the preceding Section 1, a record owner could be any person having a recognized interest of record, such as the respondent herein, who had duly recorded its mineral deeds. The Court of Appeals was manifestly correct in construing the "record owner" entitled to notice of cancellation under the statute as including the respondent. While the Oklahoma Supreme Court has never construed the term, yet, under somewhat similar statutes, the term has been universally construed by other state courts in the same manner as by the Court of Appeals in this case. *Okanogan Power & Irrigation Co.* v. *Quackenbush*, 107 Wash. 651, 182 Pac. 618; *Hunt* v. *State*, 110 Tex. 204, 217 S.W. 1034; *Godfrit* v. *Judd* (Colo.), 182 P.2d 907. See, also, Vol. 36, "Words and Phrases", at page 559; Vol. 1, Merrill on Notice, Sec. 560, at page 589.

In construing the term, the Court of Appeals was not unmindful of the ruling of the Oklahoma Supreme Court that forfeitures of state school lands are frowned upon and are to be strictly construed against the Land Commissioners and in favor of notice. See *Dale* v. *Deal, supra; Miller* v. *Frampton,* 100 Okla. 115, 227 Pac. 890. Furthermore, the Court of Appeals held that respondent's mineral rights were vested under Oklahoma law and that such an interpretation should be given the statute which would comport with the constitutional requirements of due process of law.

Being a "record owner" entitled to notice under the Oklahoma statute, the petitioner's contention that respondent was not entitled to notice of forfeiture of its rights, due to lack of privity of contract with the State of Oklahoma, is untenable. The statute itself compelled the giving of notice to respondent.

II.

LACK OF A SUBSTANTIAL QUESTION OF GENERAL PUBLIC CONCERN.

Having decided that respondent was entitled to notice of forfeiture of the certificate of purchase contracts in accordance with statutory requisites, hereinabove discussed, the Court of Appeals found it unnecessary to predicate its judgment upon the constitutional questions raised respecting the requirements of notice under the due process clauses of the Fourteenth Amendment to the Constitution of the United States of America and Article II, Section 7, of the Constitution of the State of Oklahoma. In this pos-

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ture, the petition for certiorari filed herein does not disclose necessary review concerning any Federal constitutional or statutory question.

Petitioner urges that review should be granted on the ground that the rule announced by the Court of Appeals upsets years of administration and management of the public lands of the State of Oklahoma. As noted hereinabove, the Court of Appeals concluded that the interpretation placed upon 64 Okla. Stats., Section 191, by recent decisions of the Supreme Court of Oklahoma renders the administrative interpretation untenable. *Berryman* v. *Producers Corp.*, 240 P.2d 111, and *Johnson* v. *Farmer's Union Co-op. Royalty Co.*, 238 P.2d 831. The judicial construction of the statute is not new. In *First National Bank of Butler* v. *Welch* (1925), 119 Okla. 270, 250 Pac. 100, the Oklahoma Supreme Court, referring to that part of the statutory provision relating to approval of conveyances, said:

> "The balance of the section refers to the manner and method of transfer of the purchaser's interest where the assignee of the certificate of purchase assumes payment of deferred payments and executes a new certificate of purchase note."

There is no evidence herein that the Commissioners had promulgated or prescribed any rule or regulation requiring approval by them of a sale of a part of the certificate holder's interest in order to validate such a sale.

Where an administrative construction is manifestly wrong or clearly erroneous, it is not to be followed by the courts, but is to be rejected. *Jewell Ridge Coal Corp.* v. *Local No. 6167, U.M.W.*, 325 U.S. 161, 65 Sup. Ct. 1063, 89

L. Ed. 1534, rehearing denied in 325 U.S. 897, 65 Sup. Ct. 1550, 89 L. Ed. 2007. There is an absence of any evidence in this case as to administrative practice at the time of the cancellation of the certificates in question. Many years had elapsed and the testimony of petitioner's witness in the trial court, Mr. Lee, was to the effect that during the period of time he has served as an employee of the Commission (1947 to 1954) that approval has been the required policy of the Land Commissioners. The trial proceedings reflect reference made to changes in the form and provisions of certificates of purchase. It is not disclosed as to whether the present adopted policy of the Commissioners results from an interpretation of the plain language of the present form of certificate requiring that the Commissioners give their approval in writing to a sale by a certificate holder of a part of his fee simple title.

Respectfully submitted,

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